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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/829,354 | 04/22/2004 | Gabriel Danziger | 030537-0215 | 6577 |

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FOLEY AND LARDNER
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EXAMINER

BELL, KENT L

ART UNIT PAPER NUMBER

1661

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|-----------------------------------|--|
| Office Action Summary | Application No. 10/829,354 | Applicant(s) DANZIGER, GABRIEL | |
| | Examiner Kent L. Bell | Art Unit 1661 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on application filed 4/22/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/22/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

K. L. Bell

Detailed Action

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

Detailed Action

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, line 10, Applicant should place "Danlisablue" in single quotation marks as this is the proper way to set forth a cultivar designation.

B. Page 2, lines 16-21, Applicant should set forth in the specification a brief comparison between the instant plant and the parental cultivar, 'PTE'. Such need not be in any great detail but should at least distinguish the two cultivars from each other.

Detailed Action

C. Page 3, lines 6 and 7, Applicant should delete “The photographic drawing shows a side view of a ‘Danlialblue’ plant.” as lines 7-9 of the same page specifically describe each photographic drawing and the recitation does not specifically set forth which drawing is being described.

D. Page 3, lines 7-9, Applicant states “ ‘Danlialblue’ ”. It is not clear if applicant intends ‘Danlialblue’ or something else. Correction and/or clarification is necessary.

E. Page 4, line 22, Applicant states “70-45”. It appears applicant may have meant --45-70-- or something else. Correction and/or clarification is necessary.

F. Page 5, lines 1-6, Applicant should set forth in the specification additional information relative to the instant plant’s stems including the typical and observed stem diameter and internode length.

G. Page 6, lines 14 and 15, Applicant states calyx is “White” at base and “light violet” at top. Applicant should set forth in the specification a color designation for the “White” and “light violet” colorations with reference to the employed color chart. The recitations “White” and “light violet” are vague and insufficient in these instances.

Detailed Action

H. Page 6, line 19, Applicant should set forth in the specification additional information relative to the instant plant's flower including the typical and observed flower depth.

I. Page 6, line 20 to page 7, line 6, It appears applicant is describing the instant plant's petals. However, it is uncertain as applicant has inserted this information under the description of the corolla. If such is accurate, applicant should simply place this information under a subheading entitled Petal. Correction and/or clarification is necessary.

J. Page 6, lines 22 and 23, Applicant should set forth in the specification additional information relative to the instant plant's petal including the typical and observed shape and base descriptor.

K. Page 7, lines 13-15, Applicant states the instant plant's sepals are "green and transparent" "RHS 141C". However, applicant has previously stated the calyx is "White at the base and light violet at the top." on page 6, lines 14 and 15. These recitations are contradictory as the calyx is made up of sepals and the colorations should be the same. Correction and/or clarification is necessary.

Detailed Action

L. Page 8, line 12, Applicant states “50-100” in quantity. It is not clear what “50-100” is describing. Correction and/or clarification is necessary.

M. Applicant should set forth in the specification the instant plant’s hardness.

N. Applicant sets forth Chart 1 in the specification. However, Chart 1 appears illegible. In addition, it appears the recitation “Fig 1” is written in the Chart which causes confusion with the description set forth for the first and second photographic drawings. It is suggested that applicant delete this chart from the specification and either describe in the specification the differences in inflorescence and panicle shape descriptively when comparing cultivars or recreate this chart as an additional drawing and amend the specification to correspond with the additional drawing.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Detailed Action

Claim Rejection

35 U.S.C. 112, 1st & 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

Kent L. Bell